

120 FERC ¶ 61,012
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 5, 2007

In reply refer to:
Dominion Cove Point LNG, LP
Docket Nos. RP06-417-000
RP07-36-000

Van Ness Feldman
1050 Thomas Jefferson Street, NW
Washington, DC 20007

Attention: Paul Korman
Attorney for Dominion Cove Point LNG, LP

Reference: Letter Order Approving Uncontested Settlement

Dear Mr. Korman:

1. On March 1, 2007, you submitted, on behalf of Dominion Cove Point LNG, LP (Cove Point) an Offer of Settlement consisting of a Stipulation and Agreement of Settlement (Stipulation) and Explanatory Statement resolving all issues in consolidated Docket Nos. RP07-36-000 and RP06-417-000, as well as fuel issues deferred from prior proceedings. On March 21, 2007, initial comments in support of the Stipulation were filed by Commission Trial Staff and the Public Service Company of North Carolina (North Carolina). On April 2, 2007, Cove Point and North Carolina, jointly filed reply comments in support of the Stipulation (Joint Reply Comments) clarifying the Stipulation's standard of review for changes. On April 12, 2007, the presiding administrative law judge certified the Stipulation to the Commission as uncontested.¹

2. The Stipulation consists of the following terms.

¹ *Dominion Cove Point LNG, LP*, 119 FERC ¶ 63,003 (2007).

3. Article I states that the Stipulation resolves all of the issues in consolidated Docket Nos. RP07-36-000 and RP06-417-000, as well as fuel issues deferred from prior proceedings.²
4. Article II describes the Stipulation Base Rates as being negotiated “black box” rates. The Stipulation Base Rates are identified in Appendix A. The Stipulation Base Rates are applicable to services provided by Cove Point beginning on January 1, 2007. However, these rates do not apply to certain negotiated rates. Further, 257,179 Dth, used as start-up gas, of the 367,759 Dth of commissioning cargo bought by Cove Point in 2003, shall be capitalized at \$4.08 per Dth. The sale of the remaining 110,580 Dth, sold as excess gas, shall be retained by Cove Point and passed through its fuel tracker. Customers shall receive refunds with interest of the difference between the amount calculated under the Stipulation Base Rates and the base tariff rates actually charged from January, 1, 2007 until the date the Stipulation Base Rates go into effect.
5. Article III provides that new facilities constructed pursuant to section 7 of the Natural Gas Act (NGA) shall calculate a recourse rate using a pre-tax return of 14 percent. This includes, without limitations, facilities built in Docket Nos. CP05-395, CP06-26 and pending in Docket No. CP06-469. Additionally, Article III is applicable to all new facilities constructed pursuant to section 3 of the NGA and subject to FERC rate review. Finally, this article addresses the Commission directive articulated in *Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,007, at P 123 (2007).
6. Article IV provides that the Stipulation has no effect on prior settlements.
7. Article V provides that the depreciation, amortization and negative salvage rates are listed in Appendix C. Those rates are applicable, to the extent that a facility is subject to FERC review, to all facilities constructed pursuant to the authorizations in Docket Nos. CP05-395, CP06-26 and pending in Docket No. CP06-469.
8. Article VI describes the treatment of post-retirement benefits other than pensions (PBOP) and explains that any PBOP trust shall abide by the Commission’s Statement of Policy, published on December 17, 1992 in Docket No. PL93-1-000.
9. Article VII provides for a report of all refunds due pursuant to the Stipulation.

² Footnote 2 of the Stipulation provides that the Stipulation does not resolve any of the issues in Washington Gas Light Company’s request for clarification or rehearing of the Commission’s December 6, 2006 Order in this proceeding, *Dominion Cove Point LNG, LP*, 117 FERC ¶ 61,273 (2006). On May 2, 2007, the Commission issued an order granting clarification, *Dominion Cove Point LNG, LP*, 119 FERC ¶ 61,110 (2007).

10. Article VIII provides that the Stipulation provisions are not severable, establishes an effective date and provides that nothing in the stipulation affects any rights a contesting party might have. However, any contesting party will not enjoy the benefits of the Stipulation.
11. Article IX provides that Cove Point's next section 4 general rate case shall not have an effective date later than July, 1, 2011.
12. Article X explains the termination provisions of the Stipulation. The Stipulation will expire either on the effective date of a new section 4 general rate case or when the Commission orders a change to Cove Point's Base Rates.
13. Article XI provides that the Stipulation resolves all of the issues in consolidated Docket Nos. RP07-36 and RP06-417, as well as fuel issues deferred from prior proceedings and is limited to only these issues. Article XI describes the details of credits that may be provided to Importing Customers pursuant to section 3.3 of Rate Schedule LTD-1. Article XI states that the Stipulation relates only to the specific matters referred to in the Stipulation, and parties do not waive any claim or right they may otherwise have with respect to matters not expressly provided in the Stipulation. Article XI states that unless inconsistent with the Stipulation, the Active Parties shall retain all rights, including without limitation, any rights pursuant to section 4 or section 5 of the NGA. Article XI provides that the standard of review applicable to any change to the Stipulation is the *Mobile-Sierra* "public interest"³ standard of review.⁴ Article XI provides that if the Stipulation is not approved by the Commission, then the Stipulation and any filed

³ This shorthand is derived from two Supreme Court cases decided on the same day, *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

⁴ In their Joint Reply Comments, at 1, the parties clarified Article XI as follows:

Further, the terms of the Settlement provide all parties with full section 4 and section 5 rights.

Pursuant to those rights, proposals to prospectively change the rates, terms, or conditions of service would be subject to the just and reasonable standard of review, unless those proposals also seek to change an express term of the Stipulation. To the extent that a proposal proposes changes to the rates, terms, or conditions of service it would be subject to the just and reasonable standard of review; to the extent that a proposal proposes changes to the approved Stipulation itself it would be subject to the public interest standard of review.

comments shall not be admissible as evidence against any Active Participant that objects to its admission. Further, any discussion of the Active Participants regarding the Stipulation shall not be discoverable or admissible in evidence. Article XI incorporates Appendices A through C by reference, making them a part of the Stipulation.

14. The Commission concludes that the Stipulation is fair and reasonable, and in the public interest, and it is hereby approved, to become effective as proposed consistent with the parties' clarification in their Joint Reply Comments. We find that the applicable standard of review for any changes to the Stipulation is the *Mobile-Sierra* public interest standard,⁵ and for any change to the rates, terms, and conditions of service established by the Stipulation it is the just and reasonable standard. The Commission's approval of this Stipulation does not constitute approval of, or precedent regarding, any principle of issue in these proceedings.

By direction of the Commission. Commissioner Kelly dissenting in part with a separate statement attached.
Commissioner Wellinghoff dissenting in part with a separate statement attached.

Kimberly D. Bose,
Secretary.

cc: All Parties

⁵ As a general matter, parties may bind the Commission to a public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case we find that the public interest standard may apply.

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KELLY, Commissioner, *dissenting in part*:

The parties to this Stipulation and Agreement of Settlement (Stipulation) request that the *Mobile-Sierra* “public interest” standard of review apply with respect to any proposed changes to the Stipulation, whether proposed by the Commission acting *sua sponte* or by a non-party. The Stipulation provides, among other things, the rates that will apply to services provided by Dominion Cove Point LNG beginning on January 1, 2007. The parties also request that the “just and reasonable” standard of review apply to proposals to change rates, terms and conditions of service, unless those proposals are inconsistent with the Stipulation.

As I explained in *Transcontinental Gas Pipe Line Corporation*,¹ I do not believe the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of approving such a provision. As I have previously noted,² this is particularly the case where, as here, the settlement agreement will impact the generally applicable rates, terms and conditions of service for all customers, including any new customers that did not have the opportunity to participate in the settlement negotiations.

Accordingly, I dissent in part from this order.

Suede G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

² *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have submitted a Stipulation and Agreement of Settlement (Stipulation) that, among other things, sets forth Stipulation Base Rates applicable to services provided by Dominion Cove Point LNG, LP beginning on January 1, 2007. The parties have asked the Commission to apply the “public interest” standard of review when it considers any future changes to the Stipulation, including those that may be sought by a non-party or the Commission acting *sua sponte*. The parties have further asked the Commission to apply the “just and reasonable” standard of review to proposals to prospectively change the rates, terms, or conditions of service, unless such proposals also seek to change an express term of the Stipulation.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the Stipulation sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).